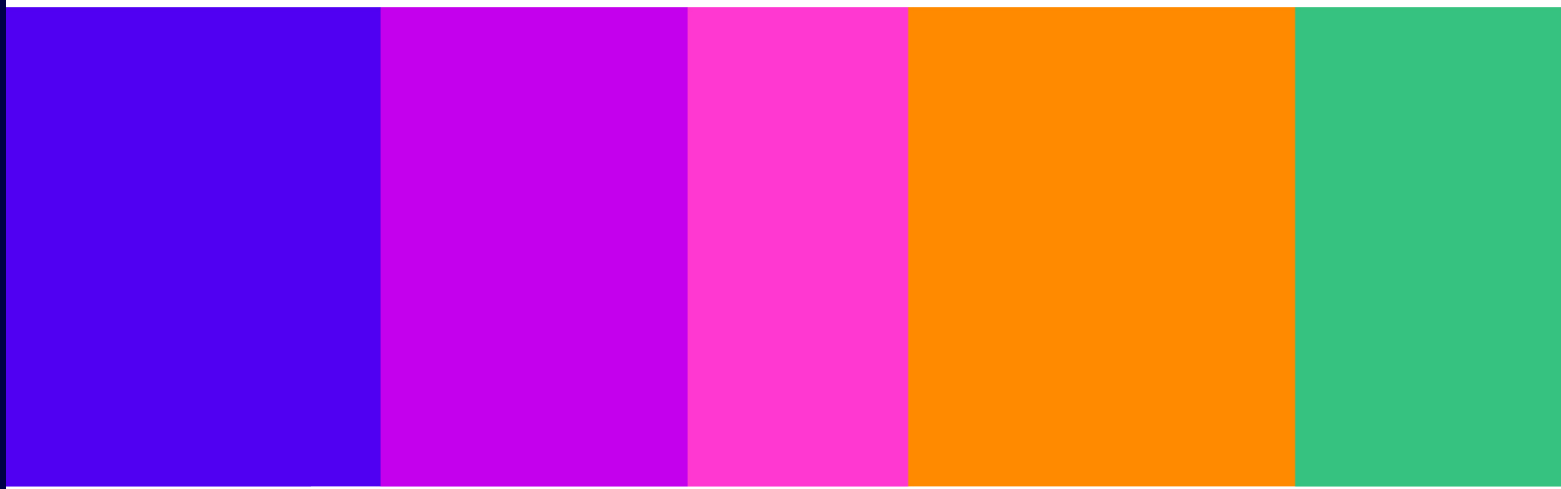


B Radio (Farnborough)

Request to change Key Commitments

Statement

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Contents

Section

1. Overview	3
2. Details and background information	4
3. Ofcom's analysis and decision	7

1. Overview

- 1.1 A community radio station's Key Commitments set out the type of broadcast output it is required to deliver, and form a part of its licence. Key Commitments include a description of the community to be served; a summary of the character of the service; a description of the programme service; social gain objectives; access and participation arrangements; and mechanisms to ensure accountability to the target community. When a proposed change to the Key Commitments would substantially alter the character of the service, the change request is subject to consultation. Following the consultation period, this document sets out our decision on whether to approve the request submitted by Rush FM Limited.

What we have decided – in brief

Rush FM Limited submitted a Key Commitment change request for its service B Radio (Farnborough). The Licensee requested to make the following changes:

- Change its character of service, such that the target community for the station is *“under-40s who live, work and study in Farnborough and surrounding areas”* instead of *“under-30s who live, work and study in Farnborough and surrounding areas”*.
- Change its music output requirement from *“mainstream music from the 1990s to present day, with some music from the 1980s. Specialist music will also feature, including a specialist dance music show, an urban music show and specific decades music shows”* to *“mainstream music from the past few decades to present day. Specialist music will also feature, including a dance and urban music show”*.
- Remove the requirement to broadcast travel news.
- Reduce its original output requirement from 84 hours per week to 44 hours per week.
- Reduce its locally-produced output requirement from 42 hours per week to 30 hours per week.

Following a period of consultation, we have decided to approve these changes to Rush FM Limited's Key Commitments.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

2. Details and background information

- 2.1 The licence for each community radio service contains ‘Key Commitments’ which describe the type of programme service the licensee is required to provide.
- 2.2 Ofcom received a Key Commitments change request from Rush FM Limited, which holds a community radio licence for Farnborough, broadcasting as B Radio (Farnborough). B Radio’s target community is “under-30s who live, work and study in Farnborough and surrounding areas”.

Rush FM Limited’s licence

- 2.3 The station commenced broadcasting in March 2021 as ‘Glow Radio’, and changed its name to ‘B Radio (Farnborough)’ in July 2021.

Statutory framework and considerations

- 2.4 Community radio services are licensed under the terms of three related pieces of legislation. In particular, the Community Radio Order 2004 (the “Order”) applies modified versions of the Communications Act 2003 (the “2003 Act”) and Broadcasting Act 1990 (the “1990 Act”) to community radio. The legislation sets out requirements that must be met for radio services to qualify as ‘community radio services’, including that such services are not profit-distributing, are provided for a target community, deliver social gain objectives, invite access and participation in the service, and are accountable to the target community.
- 2.5 Section 106(1) of the 1990 Act (as modified by the Order) requires that community radio licences include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service (as proposed by the licence holder when making its application) is maintained during the period for which the licence is in force.
- 2.6 The way section 106(1) applies in practice is that, when a prospective licence holder applies for a community radio licence, it must set out its proposals as to the character of the service it intends to provide. Those proposals are summarised in what is known as a ‘Key Commitments’ document, which then forms the basis for the terms and conditions contained in the licence regarding the ‘character of the service’ and its delivery. Such terms and conditions are agreed with each licensee before the station starts broadcasting. (The ‘licensee’ is the organisation which holds the community radio licence.)
- 2.7 The Key Commitments document includes:
 - a description of the community to be served;
 - a summary of the character of service (a short description of the station’s aims);
 - a description of the programme service;

- social gain objectives (including how the station will satisfy the mandatory social gain requirements set out in the legislation, and any other social gain objectives of the service);
- access and participation arrangements; and
- mechanisms to ensure accountability to the target community.

2.8 In determining the licence conditions that should be included in a licence under section 106(1) of the 1990 Act, section 106(1A) provides that Ofcom may, in particular, include conditions that enable it to consent to a “departure from the character of a licensed service” (or, in other words, the Key Commitments) should a licence holder subsequently request such a change. This is embodied in condition 2(5) of each community radio licence, allowing Ofcom to consent to changes in Key Commitments. Before Ofcom can give its consent it must be satisfied that one of a number of statutory criteria has been fulfilled (see below). However, the legislation also gives Ofcom discretion not to consent to a proposed change, even if one of these criteria is satisfied.

2.9 The statutory criteria that Ofcom must apply when considering requests to change Key Commitments are set out in Section 106(1A) of the 1990 Act (as modified by the Order), and are as follows:

- that the departure would not substantially alter the character of the service (section 106(1A)(a));
- that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community (section 106(1A)(b));
- that, there is evidence that, among persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure (section 106(1A)(d));
- that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities (section 106(1A)(e)); or
- that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence (section 106(1A)(f)).

2.10 Where Ofcom is considering whether or not to consent to a proposed change on the basis of sections 106(1A)(b), (d), (e) or (f) above, it is under a general obligation to consult with those who, in its opinion, are likely to be affected by the change. Ofcom is not, however, required to consult when it is satisfied that a proposed change satisfies section 106(1A)(a) - i.e. that a proposed change would "not substantially alter the character of the service". The term 'character of the service' is not defined in the legislation. We consider that it includes everything that is set out in each service's Key Commitments section of its licence. For the avoidance of doubt, this goes beyond a sub-section in the Key Commitments document entitled 'description of character of service' to encompass the entirety of the Key Commitments annex to the licence.

- 2.11 The legislation leaves the decision as to whether to permit a change, even if one of the above criteria is satisfied, to Ofcom's discretion. There may be reasons (depending on the circumstances of the case) why Ofcom may not consent to the proposed change, notwithstanding that one of the statutory criteria is met. We have published criteria we use to help us judge whether a request of this kind should be approved. We also take account of our general statutory duties, including:
- a) our principal duty to further the interests of citizens and consumers;
 - b) our duty to secure the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (including specifically a range and diversity of local radio services), as well as the maintenance of a sufficient plurality of providers of different services; and
 - c) our duty to have regard to the different interests of persons in the different parts of the UK, of the different ethnic communities within it and of persons living in rural and in urban areas.
- 2.12 Where we consult, we will usually do so by publishing a consultation document on our website. We will usually include in that document a preliminary view about the request. That is not a decision, but a provisional view, subject to the consultation process, so that those who wish to respond to the consultation can do so on an informed basis. We then consider all the responses to the consultation and make our decision on the request.

3. Ofcom's analysis and decision

- 3.1 Rush FM Limited wished to change its Key Commitments for B Radio (Farnborough) in the following ways:
- Change its character of service, such that the target community for the station is *“under-40s who live, work and study in Farnborough and surrounding areas”* instead of *“under-30s who live, work and study in Farnborough and surrounding areas”*.
 - Change its music output requirement from *“mainstream music from the 1990s to present day, with some music from the 1980s. Specialist music will also feature, including a specialist dance music show, an urban music show and specific decades music shows”* to *“mainstream music from the past few decades to present day. Specialist music will also feature, including a dance and urban music show”*.
 - Remove the requirement to broadcast travel news.
 - Reduce its original output requirement from 84 hours per week to 44 hours per week.
 - Reduce its locally-produced output requirement from 42 hours per week to 30 hours per week.
- 3.2 The request was made on the basis that the change would satisfy all five of the statutory criteria in section 106(1A) of the 1990 Act, and that it was consistent with Ofcom's generally applied policy criteria for such requests.
- 3.3 We considered that the request could substantially alter the character of the service, as we considered that the requested change to the character of the service would result in B Radio no longer being clearly targeted at a youth audience (i.e. under-30s in Farnborough). Therefore, we were not satisfied in relation to section 106(1A)(a) of the Broadcasting Act 1990 and were required to consult before deciding whether to approve the request.
- 3.4 Ofcom's Preliminary View was that we were minded to be satisfied with regard to section 106(1A)(b) of the Broadcasting Act 1990, namely that the changes if implemented would not narrow the range of programmes available to the target community of under-30s in Farnborough and surrounding areas. This was because we considered that the change to the character of service would not result in significant changes to the programming output as it would continue to appeal to under-30s as well as to listeners in their thirties.
- 3.5 In particular, we were minded to be satisfied that the retention of dedicated shows for younger listeners and specialist music programmes would help the station maintain its appeal among its current target audience of under-30s, and that despite the sizeable reductions in its original and locally-produced programming requirements it should still be able to deliver its overall character of service.
- 3.6 We also considered the request against our published policy criteria, and are satisfied that there is no policy reason to reject the request. We are satisfied that the service will continue to meet the characteristics of a community radio service and, having engaged with the licensee, we are also satisfied that the changes will not have a major effect on the overall character of the service and the social gain which it delivers to its target community.

Conclusion

- 3.7 We did not receive any responses to the consultation, and therefore have not changed our Preliminary View. On this basis, we are happy to approve the Key Commitment change request from Rush FM Limited, as we are satisfied with regard to section 106(1A)(b) of the Broadcasting Act 1990 and with regard to our published policy criteria.